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Promotion and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms

Argentina, Austria, Belgium, Bulgaria, Czech Republic, Chile, Croatia, Denmark, Ecuador, El Salvador, Estonia, Finland, France, Germany, Greece, Guatemala, Honduras, Ireland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Mexico, Monaco, Netherlands, Norway, Panama, Peru, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, Switzerland, United Kingdom of Great Britain and Northern Ireland and United States of America: draft resolution

Protection of human rights and fundamental freedoms while countering terrorism

The General Assembly,

Reaffirming the purposes and principles of the Charter of the United Nations,

Reaffirming also the fundamental importance, including in response to terrorism and the fear of terrorism, of respecting all human rights and fundamental freedoms and the rule of law,

Recalling the Universal Declaration of Human Rights,[1]

Reaffirming further that States are under the obligation to protect all human rights and fundamental freedoms of all persons,

Reiterating the important contribution of measures taken at all levels against terrorism, consistent with international law, in particular international human rights law and refugee and humanitarian law, to the functioning of democratic institutions and the maintenance of peace and security and thereby to the full enjoyment of human rights, as well as the need to continue this fight, including through international cooperation and the strengthening of the role of the United Nations in this respect,

[1] Resolution 217 A (III).

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Deeply deploring the occurrence of violations of human rights and fundamental freedoms in the context of the fight against terrorism, as well as violations of international refugee law and international humanitarian law,

Recognizing that respect for all human rights, respect for democracy and respect for the rule of law are interrelated and mutually reinforcing,

Noting with concern measures that can undermine human rights and the rule of law, such as the detention of persons suspected of acts of terrorism in the absence of a legal basis for detention and due process guarantees, the deprivation of liberty that amounts to placing a detained person outside the protection of the law, the trial of suspects without fundamental judicial guarantees, the illegal deprivation of liberty and transfer of individuals suspected of terrorist activities, and the return of suspects to countries without individual assessment of the risk of there being substantial grounds for believing that they would be in danger of subjection to torture, and limitations to effective scrutiny of counter-terrorism measures,

Stressing that measures used in the fight against terrorism, including the profiling of individuals and the use of diplomatic assurances, memorandums of understanding and other transfer agreements or arrangements, must be in compliance with the obligations of States under international law, including international human rights law, international refugee law and international humanitarian law,

Recalling article 30 of the Universal Declaration of Human Rights[1] and reaffirming that acts, methods and practices of terrorism in all its forms and manifestations are activities aimed at the destruction of human rights, fundamental freedoms and democracy, threatening the territorial integrity and security of States and destabilizing legitimately constituted Governments, and that the international community should take the necessary steps to enhance cooperation to prevent and combat terrorism,[2]

Reaffirming its unequivocal condemnation of all acts, methods and practices of terrorism in all its forms and manifestations, wherever and by whomsoever committed, regardless of their motivation, as criminal and unjustifiable, and renewing its commitment to strengthen international cooperation to prevent and combat terrorism,

Reaffirming that terrorism cannot and should not be associated with any religion, nationality, civilization or ethnic group,

Noting the declarations, statements and recommendations of a number of human rights treaty monitoring bodies and special procedures on the question of the compatibility of counter-terrorism measures with human rights obligations,

Emphasizing the importance of properly interpreting and implementing the obligations of States with respect to torture and other cruel, inhuman or degrading treatment or punishment, and of abiding strictly by the definition of torture contained in article 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,[3] in the fight against terrorism,

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[2] See sect. I, para. 17, of the Vienna Declaration and Programme of Action adopted by the World Conference on Human Rights on 25 June 1993 (A/CONF.157/24 (Part I), chap. III).

[3] United Nations, *Treaty Series*, vol. 1465, No. 24841.

Recalling its resolutions 57/219 of 18 December 2002, 58/187 of 22 December 2003, 59/191 of 20 December 2004, 60/158 of 16 December 2005, 61/171 of 19 December 2006 and 62/159 of 18 December 2007, Commission on Human Rights resolutions 2003/68 of 25 April 2003,[4] 2004/87 of 21 April 2004[5] and 2005/80 of 21 April 2005,[6] and other relevant resolutions of the General Assembly, the Commission on Human Rights and the Human Rights Council, including Council decision 2/112 of 27 November 2006[7] and resolution 7/7 of 27 March 2008,[8]

Acknowledging the work of the Human Rights Council in promoting respect for the protection of human rights and fundamental freedoms in the fight against terrorism,

Recognizing the importance of the United Nations Global Counter-Terrorism Strategy, adopted on 8 September 2006,[9] and reaffirming its relevant clauses on measures to ensure respect for human rights for all, international humanitarian law and the rule of law as the fundamental basis for the fight against terrorism,

Recalling also its resolution 62/272 of 5 September 2008, by which, after the first review of the implementation of the Global Counter-Terrorism Strategy, it called upon the United Nations entities involved in supporting counter-terrorism efforts to continue to facilitate the promotion and protection of human rights and fundamental freedoms while countering terrorism,

1. *Reaffirms* that States must ensure that any measure taken to combat terrorism complies with their obligations under international law, in particular international human rights, refugee and humanitarian law;

2. *Deeply deplores* the suffering caused by terrorism to the victims and their families, expresses its profound solidarity with them, and stresses the importance of providing them with assistance;

3. *Reaffirms* the obligation of States, in accordance with article 4 of the International Covenant on Civil and Political Rights,[10] to respect certain rights as non-derogable in any circumstances, recalls, in regard to all other Covenant rights, that any measures derogating from the provisions of the Covenant must be in accordance with that article in all cases, and underlines the exceptional and temporary nature of any such derogations;[11]

4. *Calls upon* States to raise awareness about the importance of these obligations among national authorities involved in combating terrorism;

5. *Reaffirms* that counter-terrorism measures should be implemented in full consideration of the human rights of persons belonging to minorities and must not

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[4] See *Official Records of the Economic and Social Council, 2003, Supplement No. 3* (E/2003/23), chap. II, sect. A.

[5] Ibid., *2004, Supplement No. 3* (E/2004/23), chap. II, sect. A.

[6] Ibid., *2005, Supplement No. 3* and corrigenda (E/2005/23 and Corr.1 and 2), chap. II, sect. A.

[7] See *Official Records of the General Assembly, Sixty-second Session, Supplement No. 53* (A/62/53), chap. I, sect. B.

[8] Ibid., *Sixty-third Session, Supplement No. 53* (A/63/53), chap. II.

[9] Resolution 60/288.

[10] See resolution 2200 A (XXI), annex.

[11] See, for example, General Comment No. 29 on states of emergency adopted by the Human Rights Committee on 24 July 2001.

be discriminatory on grounds such as race, colour, sex, language, religion or social origin;

6. *Calls upon* States not to resort to profiling based on stereotypes founded on grounds of discrimination prohibited by international law, including on racial, ethnic and/or religious grounds;

7. *Urges* States, while countering terrorism, to fully comply with their obligations in respect of torture and other cruel, inhuman or degrading treatment or punishment, in particular the absolute prohibition of torture;

8. *Urges* States to fully respect non-refoulement obligations under international refugee and human rights law and, at the same time, to review, with full respect for these obligations and other legal safeguards, the validity of a refugee status decision in an individual case if credible and relevant evidence comes to light that indicates that the person in question has committed any criminal acts, including terrorist acts, falling under the exclusion clauses under international refugee law;

9. *Calls upon* States to refrain from returning persons, including in cases related to terrorism, to their countries of origin or to a third State whenever such transfer would be contrary to their obligations under international law, in particular human rights law, international humanitarian law and international refugee law, including in cases where there are substantial grounds for believing that they would be in danger of subjection to torture, or where their life or freedom would be threatened in violation of international refugee law on account of their race, religion, nationality, membership of a particular social group or political opinion, bearing in mind obligations that States may have to prosecute individuals not returned;

10. *Also calls upon* States to ensure that guidelines and practices in all border control operations and other pre-entry mechanisms are clear and fully respect their obligations under international law, particularly refugee law and human rights law, towards persons seeking international protection;

11. *Urges* States, while countering terrorism, to ensure due process guarantees, consistent with all relevant provisions of the Universal Declaration of Human Rights,[1] and their obligations under the International Covenant on Civil and Political Rights[10] and under the Geneva Conventions of 1949[12] and the Additional Protocols thereto, and the 1951 Convention relating to the Status of Refugees[13] and the 1967 Protocol thereto[14] in their respective fields of applicability;

12. *Also urges* all States to take all necessary steps to ensure that persons deprived of liberty, regardless of the place of arrest or detention, benefit from the guarantees to which they are entitled under international law, including the review of the detention and, when subjected to trial, fundamental judicial guarantees;

13. *Opposes* any form of deprivation of liberty that amounts to placing a detained person outside the protection of the law, and urges States to respect the safeguards concerning the liberty, security and dignity of the person and to treat all prisoners in all places of detention in accordance with international law, including human rights law and international humanitarian law;

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[12] United Nations, *Treaty Series*, vol. 75, Nos. 970-973.

[13] Ibid., vol. 189, No. 2545.

[14] Ibid., vol. 606, No. 8791.

14. *Acknowledges* the adoption of the International Convention for the Protection of All Persons from Enforced Disappearance in its resolution 61/177 of 20 December 2006, and recognizes that the entry into force of the Convention will be an important step in support of the rule of law in countering terrorism;

15. *Reaffirms* that it is imperative that all States work to uphold and protect the dignity of individuals and their fundamental freedoms, as well as democratic practices and the rule of law, while countering terrorism;

16. *Encourages* States, while countering terrorism, to take into account relevant United Nations resolutions and decisions on human rights, and encourages them to give due consideration to the recommendations of the special procedures and mechanisms of the Human Rights Council and the relevant comments and views of United Nations human rights treaty bodies;

17. *Calls upon* States to ensure that their laws criminalizing acts of terror and terrorism-related acts are accessible, formulated with precision, non-discriminatory, non-retroactive and in accordance with international law, including human rights law;

18. *Emphasizes* that targeted sanctions are a significant tool in countering terrorism and have a direct impact on targeted individuals and entities, recognizes the need to continue ensuring that fair and clear procedures are strengthened in order to enhance the efficiency and transparency of the United Nations targeted sanctions regime and in this regard welcomes the modifications introduced by the Security Council in its resolution 1822 (2008) of 30 June 2008, including the relevant provisions regarding the review of the Consolidated List, and encourages the Security Council and its Committee established pursuant to resolution 1267 (1999) to continue enhancing their efforts in support of these objectives, while taking into consideration further relevant and appropriate proposals;

19. *Urges* States, while ensuring full compliance with their international obligations, to include adequate human rights guarantees in their national procedures for the listing of individuals and entities with a view to combating terrorism;

20. *Takes note with appreciation* of the report of the Secretary-General[15] and the report of the Special Rapporteur of the Human Rights Council on the promotion and protection of human rights and fundamental freedoms while countering terrorism[16] submitted pursuant to resolution 62/159, and takes note of the recommendations and conclusions contained therein;

21. *Welcomes* the ongoing dialogue established in the context of the fight against terrorism between the Security Council and its Counter-Terrorism Committee and the relevant bodies for the promotion and protection of human rights, and encourages the Security Council and its Counter-Terrorism Committee to strengthen the links and to continue to develop cooperation with relevant human rights bodies, in particular with the Office of the United Nations High Commissioner for Human Rights, the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism and other relevant special procedures and mechanisms of the Human Rights

[15] A/63/337.

[16] See A/63/223.

Council, giving due regard to the promotion and protection of human rights in the ongoing work pursuant to relevant Security Council resolutions relating to terrorism;

22. *Calls upon* States and other relevant actors, as appropriate, to continue to implement the United Nations Global Counter-Terrorism Strategy,[9] which, inter alia, reaffirms respect for human rights for all and the rule of law as the fundamental basis of the fight against terrorism;

23. *Requests* the Office of the High Commissioner and the Special Rapporteur to continue to contribute to the work of the Counter-Terrorism Implementation Task Force, including by raising awareness about the need to respect human rights while countering terrorism;

24. *Requests* the Counter-Terrorism Implementation Task Force to continue its efforts to ensure that entities of the United Nations system can better coordinate and enhance their support to Member States in their efforts to implement their obligations under international law, including international human rights law, international refugee law and international humanitarian law while countering terrorism;

25. *Calls upon* international, regional and subregional organizations to strengthen information-sharing, coordination and cooperation in promoting the protection of human rights and fundamental freedoms while countering terrorism;

26. *Acknowledges with appreciation* the cooperation between the Special Rapporteur and all other relevant procedures and mechanisms of the Human Rights Council as well as the United Nations human rights treaty bodies, and urges them to continue their cooperation, in accordance with their mandates, and to coordinate their efforts, where appropriate, in order to promote a consistent approach on this subject;

27. *Requests* all Governments to cooperate fully with the Special Rapporteur in the performance of the tasks and duties mandated, including by reacting promptly to the urgent appeals of the Special Rapporteur and providing the information requested, as well as to cooperate with other relevant procedures and mechanisms of the Human Rights Council dealing with the promotion and protection of human rights and fundamental freedoms while countering terrorism;

28. *Calls upon* States to give serious consideration to responding favourably to requests by the Special Rapporteur to visit their countries;

29. *Welcomes* the work of the United Nations High Commissioner for Human Rights to implement the mandate given to her in 2005, in resolution 60/158, and requests the High Commissioner to continue her efforts in this regard;

30. *Requests* the Secretary-General to submit a report on the implementation of the present resolution to the Human Rights Council and to the General Assembly at its sixty-fourth session;

31. *Decides* to consider at its sixty-fourth session the report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism.